IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.311 OF 2007

Shri.Sambhaji Haribhau Kudale ..Applicant

Vs.

State of Maharashtra ..Respondents

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Mr.Shirish Gupte senior advocate i/b
Mr.A.V.Dhavale and S.P.Hulyalkar for applicant
Mr.Rajesh More A.P.P. for the State

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**CORAM: SMT.V.K.TAHILRAMANI,J.**
**DATE : APRIL 27, 2007**

**P.C.**

1. Heard the learned counsel for the applicant and the learned A.P.P. for the State.

2. The applicant is an accused in MCOCA Special Case No.6 of 2004 which is pending on the file of the Special Judge, MCOC Act. It pertains to C.R. registered by Loni Kalbhor Police Station. The offences alleged are punishable under Section 3(1) & 3(4) of the M.C.O.C. Act.

3. The learned counsel's submission is that applicant had applied for bail before the Special

Judge. His application Exhibit-127 was taken up for consideration along with the application for bail preferred by co-accused Amit Sainath Chaudhary (Exh.125) and the said application was rejected by the Special Judge on 28.8.2006 without adverting to the contentions raised before him. This Court by order dated 5.12.2006 set aside the said order and restored the application for bail (Exh.125) to the file of the learned Special Judge to decide it afresh. Mr.Gupte submitted that the case of the present applicant is similarly situated.

4. It is submitted that for the offence of "organised crime" to be made out the ingredients specified in Section 2(1)(e) have to be satisfied. This provision refers to "continuing unlawful activity". This term is defined in Section 2(1)(d) to mean as under:-

. "2. Definitions:- (1) In this Act, unless the context otherwise requires.---

(a) .....

(b) .....

(c) .....

> (d) "continuing unlawful activity" means in activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;"

5. According to Mr.Gupte, from a bare perusal of this definition, it is clear that unlawful activity must be continuing. It should be prohibited by law. It should be a cognizable offence punishable with imprisonment of three years or more. It should be undertaken, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate. Further, in respect of such activity more than one charge-sheet should

have been filed before a competent court within the preceding period of ten years and that the court should have taken cognizance of the same. He submits that material on record, as far as present applicant is concerned, was produced during the course of the bail application and it is urged that there are six C.Rs. which resulted in a charge sheet being filed against the applicant before a competent court. However, out of six cases, in four cases, the applicant has been acquitted. Two cases are pending. In these two pending cases, the maximum punishment provided is three months. It is further stated that these two pending cases had no connection with the organised crime syndicate of Mr.Londhe. Mr.Gupte submitted that assuming that the cases are disposed of, yet, it was incumbent upon the learned Special Judge to have satisfied himself that requirements under Section 2(1)(d) and (e) are complied with in the facts and circumstances of this case. Registration of C.Rs. or filing of charge sheet, taking of cognizance with regard to the unlawful activity is not enough, but the activity should be undertaken singly or jointly as a member of an organised crime or on behalf of such syndicate. He submitted that acts

are individual and not connected with activities of organised crime syndicate or undertaken on its behalf. This aspect of the matter has been completely over looked, according to Mr.Gupte by the learned Special Judge. He stated that this aspect was argued and highlighted before the Special Judge.

6. Mr.Gupte reiterated this submission before me and placed reliance on several decisions of this Court. On the other hand, the learned APP states that there is material to disclose that the above cases are not isolated/individual acts but a continuing unlawful activity and the ingredients of the above mentioned provisions are satisfied.

7. Be that as it may, from a perusal of the order passed by the learned Special Judge under MCOC Act, it appears that he has not adverted to these aspects. There is nothing to indicate that all the contentious raised before him have been considered. In such circumstances, while satisfying himself regarding the mandate of Section 21(4), the learned Judge should have dealt with these aspects as well. Instead of this court going into this aspect, for

the first time, it would be desirable and in the interest of justice if the application of the applicant for bail (Exh.127) is restored to the file of the Special Judge, MCOC Act Pune for being decided afresh and in accordance with law, uninfluenced by any observations made in the impugned order.

8. Accordingly, the said application stands restored to the file for decision afresh after hearing both sides. The learned judge to endeavour to dispose of the said application expeditiously. All contentions of both sides are expressly kept open. It is clarified that this Court has not expressed any opinion on the merits of the case.

[Smt.V.K.Tahilramani, J.]